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PATENT & TRADEMARK OFFICE

Docket No.: 9988.066.00
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of: SHIN, Dong Hoon	Customer No.: 30827
Application No.: 10/717,666	Confirmation No.: 9057
Filed: November 21, 2003	Art Unit: 1746
For: DISHWASHER CONTROL METHOD AND DISHWASHER USING THE SAME	Examiner: Z. El Arini

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

Applicant notes that in the Interview Summary attached to the Office Communication mailed November 28, 2006, Examiner El Arini stated that the 35 U.S.C. § 112, first paragraph rejection of claims 1-3 would be withdrawn. Accordingly, the rejection of claims 1-3 under 35 U.S.C. § 112, first paragraph in the final rejection mailed September 5, 2006 is moot and Applicant does not present remarks or arguments concerning that rejection below.

Claims 1-4 are pending in this application. Claim 4 has been withdrawn from consideration. The Examiner rejected claims 1-3 under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 5,330,580 to Whipple (hereinafter "*Whipple*"). Applicant requests a review of the final rejection for the reasons stated below.

The Examiner has failed to establish a prima *facie* case of obviousness of the invention as recited in claims 1-3. To establish *prima facie* case of obviousness, all of the limitations of the claimed invention must be taught or suggested by the prior art. Whipple, however, fails to teach or suggest all of the elements recited in claims 1-3 of the instant application.

The Examiner admits that *Whipple* does "not teach the steps as claimed." Office Action of September 5, 2006 at p. 3. Yet, using impermissible hindsight reasoning, the Examiner asserts that by using Whipple, it would have been obvious to arrive at the claimed invention. *Id.* Applicant respectfully disagrees.

Whipple describes a fuzzy logic controller 200 that senses several variables to monitor oscillations or surges in the power consumption of a motor. *See* Whipple at col. 6, lines 51-66; col. 8, line 55-57. When the fuzzy logic controller of Whipple senses the end of oscillations or surges in the power consumption, the amount of water being input into the washing machine is stopped. *See id.* Whipple, however, fails to teach or suggest at least, "comparing the value indicative of the determined electrical characteristic with a predetermined value, and continuing a supply of water for a second predetermined period after a predetermined first period if the value indicative of the determined electrical characteristic is not less than the predetermined value during the second predetermined time period," as recited in independent claim 1. Applicant respectfully states that any assertion to the contrary is based on impermissible hindsight reasoning.

To justify the Examiner's hindsight reasoning, the Examiner states, "It would have been obvious for one skilled in the art to use the method of controlling the dishwater taught by *Whipple* to obtain the claimed invention, because the process as claimed is inherent in the

Whipple. This is also because the system taught by *Whipple* is able to perform the steps as claimed." Office Action at p. 3. Applicant respectfully disagrees.

"To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." M.P.E.P § 2112 (IV). The Examiner is at least in error to assert that waiting for a 2nd or 3rd predetermined time period to elapse before either shutting off a water supply or stopping a wash motor is necessarily present in the thing described in Whipple.

For the reasons as set forth above, the Applicant respectfully states that independent claim 1 is patentable in view of Whipple. Claims 2 and 3, which depend from claim 1 are likewise patentable. The application is in condition for allowance. The Applicant respectfully requests the Office to withdraw the rejection of claims 1-3 and issue a notice of allowance.

If these papers are not considered timely filed by the Patent and Trademark Office, then a petition is hereby made under 37 C.F.R. §1.136, and any additional fees required under 37 C.F.R. §1.136 for any necessary extension of time, or any other fees required to complete the filing of this response, may be charged to Deposit Account No. 50-0911. Please credit any overpayment to deposit Account No. 50-0911. A duplicate copy of this sheet is enclosed.

Dated: March 5, 2007

Respectfully submitted,

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